

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4496 of 1985

Date of decision: 5-3-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TRIKAMLAL M PATEL

Versus

SHANTUJI KALUJI

Appearance:

MR Vimal M. Patel for Petitioner
None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 05/03/97

ORAL JUDGEMENT

Challenge is made by the petitioner to the order dated 19th February, 1985 passed in appeal No.180/84 by the Deputy Commissioner of Labour and Appellate Authority under the Payment of Gratuity Act, 1972 at Ahmedabad, arising out of the order dated 20th 20th June, 1983 passed by the Assistant Commissioner of Labour and Controlling Authority under the Payment of Gratuity Act in Gratuity Applications No.141 of 1983 and 135 of 1983. The facts of the case are that the petitioner is a partner of erstwhile partnership firm of M/s.Hiralal Ramlal Patel & Company, which was carrying on business of rolling bidis. The first respondent was employed by the petitioner as a worker and he was doing the work of rolling bidis under the establishment. The second respondent was also working as an employee of the petitioner and he was also doing the work of rolling bidis in the petitioner's establishment. Employment of respondents No.1 and 2 had come to an end from October 15, 1981. The first respondent filed gratuity application in Form 'N' on 1st January, 1982 claiming an amount of Rs.2,800/-. The said application was registered as Application No.5 of 1982. The said application was resisted by the petitioner by filing written objections and it was pointed out that the respondent workman was entitled to an amount of Rs.2176.80 ps. towards gratuity for the entire period of his service from January 1964 to October 15, 1981. The second respondent filed gratuity application in Form 'N', similarly claiming gratuity and the said application came to be numbered as Application No.6/82. Respondent No.2 has claimed Rs.1,900/- towards gratuity. This application has also been resisted by the petitioner contending that respondent No.2 is entitled to Rs.134.60 ps. only for the entire period of employment with the petitioner firm from December 1966 upto 15th October, 1981.

2. Both the aforesaid applications came to be decided on the basis of settlement which has been arrived at between the parties before the Controlling Authority. The Controlling Authority, as per the case of the petitioner, determined an amount of Rs.2585/- payable by way of gratuity to the first respondent, and Rs.1465/as amount payable by the petitioner to the second respondent. The petitioner has come up with the case that he has paid the amount of gratuity to the respondent workmen and arrived at settlement, on the basis of which order has been passed by the Controlling Authority. Both the respondents filed application bearing No.141/83 and

135/83 and prayed for payment of difference of the amount of gratuity on account of revision of wages as notified by the State Government vide its notification dated 15th July, 1981 under the provisions of the Minimum Wages Act, 1936. Both these applications were resisted by the petitioners on the ground that the amount of gratuity due to both the respondent workmen were duly paid by the petitioner under orders of the respondent Controlling Authority and as such the second applications on the same facts does not lie. The petitioner has raised the plea of principles of resjudicata as well as of estoppel. The Controlling authority vide its order dated 20th June, 1983 awarded the difference in gratuity amount to both the workmen on the basis of notification aforesaid. Under the aforesaid order the first respondent was awarded an amount of Rs.187/- by way of difference in the gratuity and the second respondent was awarded an amount of Rs.571/- by way of difference. It is really shocking that despite the meagre amount involved, the petitioner was not satisfied and has taken up the matter before the appellate authority by filing appeal. The appellate authority disposed of the appeal under order dated 14th February, 1995. Still the petitioner did not feel satisfied. Hence the present special civil application.

3. The learned counsel for the petitioner contended with all vehemence that the Controlling authority has no jurisdiction to entertain the second application on the same cause of action. It has further been contended that the second application is barred by the principle of resjudicata and respondents workmen are estopped from raising any claim for difference of gratuity on the basis of the revision of wages.

4. The respondents have put appearance in this case. I have given my thoughtful consideration to the submissions made by the learned counsel for the petitioner.

5. This petition has been filed by the petitioner under Article 227 of the Constitution of India. The orders impugned in this special civil application are the orders made by the Controlling Authority, and confirmed by the appellate authority, in respect of the difference of gratuity amount payable to respondents No.1 and 2. It is true that respondents No.1 and 2 had earlier settled this matter and accordingly order was made by the controlling authority, but is equally true that whatever settlement arrived at by respondents No.1 and 2 with the

petitioner was on the basis of the wages they were drawing on the date of termination of their services. Settlement of amount could have been arrived at on the basis of wages which were paid. Revised minimum wages has been made effective from 15th July, 1981, i.e. prior to the termination of services of the petitioner on 15th October, 1981. In case the revision of minimum wages would have been taken into consideration, then as per settlement, the amount of gratuity would have been Rs.2016/- in one case and Rs.2772/- in the other case. That is what exactly has been done by the Controlling Authority, and awarded the difference amount of Rs.187/in one case and Rs.571/- in the other.

6. Leaving apart the contention raised by the learned counsel for the petitioner, the vital question that arises is whether this court should interfere in the matter or not. The firm has been closed long back and services of respondent No.1 and 2 have been terminated. Now, more or less, the issue remains to be academic. Keeping in view the mounting arrears of cases in this court, the question arises whether it is advisable for this court to invest its time to decide this academic question. When this court has not enough time to decide matters on merits which pertain to dismissal or termination from service, claim for pension, gratuity, bonus, and even salaries, should the court consume time to decide such academic question because the petitioner could afford the luxury litigation in a matter where the difference of gratuity amount ordered to be paid is only Rs.187/- in one case and Rs.571/- in the other. Otherwise also, sitting under Article 227 of the Constitution of India, it is not the Constitutional obligation of this court to extend its jurisdiction in all cases. This Court, under Article 227 of the Constitution, cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. The apex court in the case of *Laxmikant Revachand Bhojwani vs. P.M.Pardeshi*, reported in 1995(6) SCC 576 observed that the prerogative of this court under Article 227 of the Constitution must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. In the present case it cannot be said that in case this court declines to interfere in the matter grave injustice would be caused to the petitioner. I am constrained to observe here that the petitioner would have spent much more than the amount of difference of gratuity ordered to be paid by him to respondents No.1 and 2. It is well settled

that even if where orders of Tribunal are challenged on the ground of jurisdiction and though the contention may have some substance, there being no failure of justice in the case, exercise of extraordinary jurisdiction either under Article 226 or Article 227 of the Constitution of India would not be warranted. Reference in this regard may be made to the decisions of the Supreme Court in the case of A.V.D'Costa vs. B.C. Patel, reported in AIR 1957 SC 227 and in the case of Balvantrai Chimanlal Trivedi vs. M.N.Nagrashna , reported in AIR 1960 SC 407.

7. In the result this writ petition fails and the same is dismissed. Rule discharged.

....

csm